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5 IN THE UNITED STATES DISTRICT COURT
6
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 FRANCISCA MORALEZ,

9 Plaintiff,

No. C 17-05127 WHA

10 v.

11 WAL-MART STORES INC., dba WALMART
12 SUPERCENTER, and WAL-MART REAL
13 ESTATE BUSINESS TRUST, a Delaware
Business Trust,

14 Defendants.
_____ /

**ORDER DENYING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

15
16 **INTRODUCTION**

17 In this action asserting claims under the Americans with Disabilities Act and
18 California's Unruh Civil Rights Act, plaintiff moves for summary judgment on all of her claims.
19 For the following reasons, the motion is **DENIED**.

20 **STATEMENT**

21 Plaintiff Francisca Moralez claims to suffer from rheumatoid arthritis. She cannot walk
22 or stand in "a meaningful manner" and has used a power wheelchair for over ten years. Since
23 2013, plaintiff has lived approximately three miles from a Walmart Supercenter in Antioch,
24 California. At all relevant times, defendants Wal-Mart Real Estate Business Trust and Wal-
25 Mart Stores, Inc. owned and operated the store (Dkt. No. 53-1 ¶¶ 1-8).

26 Plaintiff visited the Walmart store in Antioch several times, including on February 21,
27 2017 and May 20, 2017. When plaintiff visited on February 21 and May 20, she parked near
28 the entrance to the store's auto shop. Upon entering the auto shop, plaintiff encountered an
abrupt and high door threshold which was difficult to wheel over. Once inside, she encountered

1 loose rugs on the floor which affected the movement of her wheelchair. And, in order to get to
2 the main store, plaintiff had to go through a heavy and difficult-to-open door that closed on her
3 (*id.* ¶¶ 10–13).

4 Plaintiff initiated this action in September 2017, alleging claims under the Americans
5 with Disabilities Act and California’s Unruh Civil Rights Act. In January 2018, the parties
6 conducted a joint inspection of the store pursuant to General Order 56. The following month,
7 plaintiff provided defendants with a list of seventy-one alleged ADA violations discovered
8 during the joint inspection. Plaintiff later amended her complaint to allege these newly-
9 discovered violations. Plaintiff now moves for summary judgment on all of her claims (Dkt.
10 Nos. 1, 34, 54). This order follows full briefing. Pursuant to Civ. L.R. 7-1(b), this order finds
11 plaintiff’s motion suitable for submission without oral argument and hereby **VACATES** the
12 hearing scheduled for November 1.

13 ANALYSIS

14 Summary judgment is proper where the pleadings, depositions, declarations, attached
15 documents and other evidence “that there is no genuine dispute as to any material fact and the
16 movant is entitled to judgment as a matter of law.” FRCP 56(a). On summary judgment, the
17 Court must draw all reasonable evidentiary inferences in favor of the non-moving party,
18 including questions of credibility and of the weight to be accorded particular evidence. *Masson*
19 *v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991). To prevail on her ADA Title III
20 discrimination claim, plaintiff must show, among other things, that she is disabled within the
21 meaning of the ADA. *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 730 (9th Cir. 2007) (citing 42
22 U.S.C. §§ 12182(a)–(b)). Because plaintiff has failed to meet her burden of showing that no
23 genuine issue of material fact exists as to whether or not she is disabled, her motion for
24 summary judgment must be denied.

25 An individual is disabled for purposes of the ADA if she (1) has a physical or mental
26 impairment that substantially limits one or more of the individual’s major life activities, (2) has
27 a record of such an impairment, or (3) is regarded as having such an impairment. *Coons v.*
28 *Sec’y of U.S. Dep’t of Treasury*, 383 F.3d 879, 884 (9th Cir. 2004) (citation omitted). Because

1 plaintiff's state-law discrimination claim is founded solely on the Unruh Act's incorporation of
2 the ADA, the same definition of "disability" applies to her state-law claim. *Turner v.*
3 *Association of American Medical Colleges*, 167 Cal. App. 4th 1401, 1410–11 (2008).

4 Plaintiff claims to be disabled because she has a physical impairment — rheumatoid
5 arthritis — that substantially limits her dexterity and ability to walk. The ability to perform
6 manual tasks and walk are unquestionably "major life activities" under the ADA. 42 U.S.C. §
7 12102(2)(A). The only proof plaintiff submits to support of her claim of disability, however, is
8 her own self-serving declaration. There, she summarily states that she suffers from rheumatoid
9 arthritis, "cannot walk or stand in a meaningful manner," and uses a power wheelchair.
10 Plaintiff further explains that her arthritis causes pain and weakness in her fingers and hands,
11 which "substantially limits [her] dexterity" (Dkt. No. 53-1 ¶¶ 3–5). Plaintiff fails to explain
12 what she means when she says she cannot walk in "a meaningful manner." Nor does she
13 explain what constitutes a "substantial" limit on her dexterity.

14 Absent from the record is any corroborating evidence such as medical records.
15 Although plaintiff states that the California Department of Motor Vehicles has issued her a
16 "permanent disabled person's license plate," she fails to offer documentation to support this
17 claim (Dkt. No. 53-1 ¶ 6). Notably, plaintiff also failed to produce any such documents in
18 discovery. In connection with plaintiff's deposition on August 8, defendants requested "all
19 DOCUMENTS that support, refer or RELATE to" plaintiff's allegation that she "suffers from
20 rheumatoid arthritis and is substantially limited in her ability to walk, requiring her to use a
21 wheelchair for mobility." Plaintiff nevertheless failed to disclose documentation of her
22 designation by the DMV or any medical designation by a health care provider. Such documents
23 also go unmentioned in plaintiff's initial disclosures (Dkt. No. 59-1 at 4, 136, 145).

24 Citing *Head v. Glacier Northwest Inc.*, 413 F.3d 1053, 1058–59 (9th Cir. 2005), plaintiff
25 argues that her own testimony regarding her disability is sufficient to establish her entitlement
26 to the ADA's protections. Not so. In *Head*, our court of appeals explained that a plaintiff's
27 testimony may establish a genuine issue of material fact sufficient to *survive* summary judgment
28 so long as the evidence consists of more than "conclusory declarations." Setting aside the

1 conclusory nature of the declaration at issue in the present case, here, it is the plaintiff who is
2 moving for summary judgment, not the defendant. Plaintiff cites no authority suggesting that
3 her declaration alone is sufficient to establish her entitlement to the ADA's protections as a
4 matter of law.

5 The conclusory assertions in plaintiff's declaration are insufficient to carry her burden
6 on summary judgment. Plaintiff's self-serving testimony can also reasonably be doubted in
7 light of her failure to submit supporting documents with her motion for summary judgment or in
8 response to discovery requests. There accordingly remains a genuine issue of material fact as to
9 whether plaintiff has a disability. Summary judgment on plaintiff's disability-discrimination
10 claims is accordingly **DENIED**.¹

11 Finally, although plaintiff labels her motion as one for "summary judgment/summary
12 adjudication," she only requests an order granting summary judgment in her favor, awarding
13 damages, and requiring defendants to remove all inaccessible conditions identified at their store.

14 Nowhere does plaintiff identify "the part of each claim or defense . . . on which summary
15 judgment is sought." FRCP 56. This order therefore does not reach the remaining issues raised
16 in plaintiff's motion, including whether any of the alleged barriers denied plaintiff full and
17 equal access to the Walmart store.

18 CONCLUSION

19 Plaintiff's motion for summary judgment is **DENIED**. Defendants' request for an order
20 granting summary judgment in their favor *sua sponte* is also **DENIED**.

21 **IT IS SO ORDERED.**

22
23 Dated: October 28, 2018.



24 WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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26 _____
27 ¹ In disregard of this district's local rules, defendants have filed eighty-four pages of evidentiary
28 objections in addition to a twenty-five page opposition brief. Civil Local Rule 7-3(a) requires that "[a]ny
evidentiary or procedural objections to [a] motion must be contained within the [opposition] brief or
memorandum." This order accordingly disregards all evidentiary objections not contained within defendants'
opposition brief. In any event, because plaintiff is not entitled to summary judgment even considering her
declaration, defendants' evidentiary objections are **OVERRULED AS MOOT**.